

15

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 766/2002

New Delhi this the 8<sup>th</sup> day of April, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vijay Shanker Pandey S/o Lt. Sh. Babban Pandey,  
R/o F.No.214, Kankar Bagh, Defence Colony,  
Patna (Bihar) ...Applicant

(By Advocate : Sh.Yogesh Sharma)

-Versus-

1. Union of India through The Secretary,  
Govt. of India, Ministry of Science & Technology,  
Technology Bhawan, New Mehrauli Road,  
New Delhi-16.
2. The Director (AIR),  
Directorate of Surveyor (Air),  
Survey of India, R.K.Puram, 2nd Floor,  
West-Block IV, New Delhi-110066.
3. The Secretary,  
Ministry of Personnel & Training,  
Govt. of India, New Delhi. ...Respondents

(By Advocate: Shri Y.S.Chauhan proxy counsel of Shri  
M.M.Sudan)

O R D E R

By Mr. Shanker Raju, Member (J):

This application is directed against an order passed by the respondents on 15.2.2002, rejecting the request of applicant for withdrawal of resignation.

2. Applicant was appointed as a Draftsman on 8.5.91 and was ailing right from the year 1994. Applicant applied for leave on 23.2.2000 on account of having Jaundice. He submitted his resignation on 28.2.2002 on personal reasons which was accepted with effect from 26.5.2000 vide letter dated 31.5.2000. Applicant in response to respondents' order has requested for his dues which were remitted to him vide DD No.0391801 dated 30.10.2000 for Rs.7636/- . Applicant submitted an application on 18.12.2000 for withdrawal of resignation as

his domestic affairs have been completed and had contained the request for re-employment. Thereafter mother of applicant also filed an application on 29.12.2000 and a similar request for withdrawal was made to the Minister of State for Labour and Employment on 16.1.2001. Aforesaid request was rejected.

3. Applicant preferred OA-3186/2001 which was disposed of with the direction to the respondents to treat the OA as a supplementary representation and dispose of the same by a detailed and speaking order. In pursuance thereof, by an order dated 15.2.2002 applicant's request for withdrawal of resignation was turned down, giving rise to the present OA.

4. Learned counsel for applicant contended that he made a representation for re-employment and by an order dated 26.3.2001 respondents have called for a fitness certificate which he produced from the Central Institute of Psychiatry dated 26.4.2001 declaring applicant fit but despite this his request for withdrawal of resignation was not accepted. By referring to Rule 26 of the CCS (Pension) Rules, 1972 it is contended that as per provisions of rule 26 (4) applicant fulfils all the requisite criteria, i.e., resignation tendered for compelling reasons and during this interregnum period of resignation and its effect, conduct of applicant was proper and the post is still vacant. The only condition which has not been fulfilled is that there has been a gap of more than 90 days between the date of which resignation became effective and applicant resumed duties and in this view of the matter it is contended that as per Rule 88 of the Pension Rules ibid with the prior concurrence of DOPT any requirement can be relaxed which

causes undue hardship. As applicant was a psychiatry patient which is apparent from the certificate issued to him on valid grounds and the fact the resignation has an effect of forfeiting his benefits applicant has faced undue hardship, accordingly request for withdrawal of resignation should have been acceded to but it has been rejected on arbitrary ground.

5. On the other hand, respondents' counsel strongly rebutted the contentions and contended that the record of applicant was dismal. He frequently absented himself and his resignation was not on account of being mentally ill but was due to personal and domestic reasons. Having failed to make a request within the time limit the resignation which has become effective with acceptance cannot be withdrawn. However, applicant was considered and even in consultation with DOPT the relaxation was not accorded.

6. I have carefully considered the rival contentions of the parties and perused the material on record. As held by the Apex Court in Union of India & Anr. v. Wing Commander T. Parthasarathy, (2001) 1 SCC 158 a resignation can be withdrawn before it is made effective. Having failed to withdraw the resignation within the permissible period of 90 days as per Rule 26 (3) of the Pension Rules and the fact that DOPT has not agreed to relaxation under Rule 88 of the Rules ibid claim of applicant is bereft of merit and is liable to be rejected.

7. However, I find that applicant while on leave for several occasions except the leave of 13 days w.e.f. 25.3.94 to 6.4.94 has shown the reasons of illness as

psychiatry. The other absences have been on account of jaundice etc. Moreover, the resignation tendered was on account of personal and domestic affairs. Applicant has not even responded to the second medical examination. In his communication dated 22.3.2000 he has requested for grant of leave to regularise the period. The certificate issued by Doctor shows applicant suffering from Jaundice. There is no reference to any mental illness or psychiatry. Once the resignation has been accepted w.e.f. 26.5.2000 by a letter dated 31.5.2000 it has become effective and his subsequent request in September and on 18.12.2000 does not show that the same has been requested to be withdrawn on account of psychiatry problem but has been on the ground that domestic affairs have been completed and the applicant has been fit for the work.

8. Contention of applicant that respondents have themselves asked him to furnish the fitness certificate cannot be an implied permission of withdrawal of resignation as after having meticulously considered what has been found that psychiatric problem as reflected in the subsequent application is an after thought as DOPT has also not agreed to the relaxation. The contention put-forth does not hold water.

9. From the perusal of the various communications made by applicant and is receipt of the dues clearly shows that on receipt of dues as an after thought the request for withdrawal of resignation has been made and this also shows that applicant was in a sound state of mind. Acceptance of resignation was duly communicated to him as in the letter dated 18.12.2000 having a reference to the resignation the receipt of resignation is amply proved.

10. In the light of the decision in Parthasarathy's case (supra) as the resignation has become effective and applicant has failed to exercise his right under Rule 26 (3) I do not find any infirmity in the orders passed by respondents, accepting the resignation and also rejecting the representation.

11. In the result, OA is found bereft of merit and is accordingly dismissed. No costs.

*S. Raju*

(Shanker Raju)  
Member (J)

"San.."